

**STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER**

Noncompetitive Sale to Preference Right Applicant

**FINAL FINDING AND DECISION – ADL 22652
pursuant to AS 38.05.102 and AS 38.05.321**

This Final Finding and Decision complements and updates the attached Preliminary Decision for ADL 22652 issued on July 27, 2020.

I. Recommended Action:

The Department of Natural Resources (Department or DNR), Division of Mining, Land and Water (Division), Land Conveyance Section (Section) received an application to purchase a parcel of State-owned land pursuant to Alaska Statute (AS) 38.05.102. This decision allows the parcel to be sold noncompetitively to the applicant. The parcel is located 10 miles southeast of Talkeetna. The legal description is S1/2 NE1/4, SE1/4 of Section 4, Township 24 North, Range 4 West, Seward Meridian in the Talkeetna Recording District, Third Judicial District, containing approximately 240 acres.

AS 38.05.102 allows the granting of a preference right purchase or lease to those holding leases authorized under AS 38.05.070-105 who are currently in good standing. A 1981 amendment to AS 38.05.070 made this section inapplicable to short-term leases. AS 38.05.321 authorizes the sale of agricultural lands by the State subject to covenants restricting use of the land.

II. Authority

The Department has authority under AS 38.05.102 to sell State-owned land if, on preparation and issuance of a written finding, it is determined to be in the best interest of the State, as required by AS 38.05.035(e) Powers and Duties of the Director. Article VIII, Section 1, of the State of Alaska Constitution states, "it is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."

The Department has authority under AS 38.05.321 to restrict land use to agricultural purposes, and AS 38.05.850 allows for dedication of rights-of-way.

III. Public Participation and Input

Pursuant to AS 38.05.945, a public notice announcing the Preliminary Decision for the proposed noncompetitive sale along with the solicitation for public comment was published and distributed in the following manner:

- Posted under State of Alaska Online Public Notice from July 27 to August 26, 2020.
- Posted on DNR Land Sales website from July 27 to August 26, 2020.
- Mailed, with a request to post for 30 days, to the Talkeetna and Trapper Creek postmasters per AS 38.05.945(c)(4).

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- Mailed, with a request to post for 30 days, to the Talkeetna and Trapper Creek libraries.
- Mailed to the regional corporation per AS 38.05.945(c)(2)-(3).
- Mailed and/or emailed to adjacent landowners within two miles, the Trapper Creek Community Council, the Talkeetna Community Council Inc., Cook Inlet Regional Inc., (CIRI), and the Montana Creek Native Association.
- Emailed to the Matanuska Susitna Borough mayor's office, manager's office, platting and zoning office, and land planning office.

The public notice stated that written comments must be received by 3:30 PM Wednesday, August 26, 2020 in order to ensure consideration and eligibility to appeal. For more information, refer to the attached Preliminary Decision.

Prior to completion of this sale a survey will be completed by an Alaska licensed surveyor. The surveyor will submit a platting application including a preliminary plat to the local platting authority prior to survey. This process will be subject to Matanuska Susitna Borough ordinances and codes. During the process the public will have opportunity at the local level to provide additional comment and feedback prior to final establishment of lot corners and monuments.

IV. Comments Received

Agency review was conducted concurrently with public notice. The Division received nine written comments during the agency review and public comment period. These comments are summarized and addressed as follows:

DNR Division of Forestry (DOF): DOF thanked the Division for the opportunity to review and has no objections to the sale.

Response: The Division appreciates review of this proposed noncompetitive sale.

DNR Resources and Development Section (RADS): RADS reviewed the preliminary decision for this proposed noncompetitive sale of agricultural land and had no further comments or corrections.

Response: The Division appreciates review of this proposed noncompetitive sale.

DNR Southcentral Regional Office (SCRO): SCRO thanked the Division for the opportunity to comment and stated no objections to sale of the leasehold under preference rights statutes. SCRO received a timely lease renewal application from the applicant in 2018 that is currently under adjudication by SCRO. SCRO has no objection to proposed access easements.

Response: The Division appreciates review of this proposed noncompetitive sale and supports lease renewal efforts in the event that a survey and appraisal cannot be completed in advance of lease expiration. For this sale to move to completion, it must occur while a lease to the applicant exists. If the lease expires or terminates before the purchase is complete, the preference right under which this purchase is approved is no longer valid and the sale cannot take place.

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Alaska Department of Transportation and Public Facilities (DOT&PF): DOT&PF thanked the Division for the opportunity to review the proposal. DOT&PF supports the Division's efforts to maintain the connectivity and functionality of highway right-of-way outside of the DOT&PF maintained system and submits the following comments:

- DOT&PF supports the creation of a public access easement along the west side of the proposed sale area. DOT&PF recommends that DNR consider creating an additional 60-foot-wide public access easement along the northern border of the proposed sale area to provide alternate access to neighboring lots and State-owned land for use for emergency evacuation during wildfire.
- DOT&PF recommends that DNR consider stipulating that the applicant's surveyor field verify that all portions of S. Mt. Hunter Drive and E. Moose Hollow Avenue located on the property in question are contained within State section-line easements and that no additional dedication is required for existing cut-and-fill slopes.
- DOT&PF advises that the vacation of State-owned right of way requires DOT&PF concurrence. Please include DOT&PF on any Agency or Public Notice that may be issued subsequently for the vacation of any portion of Hillside Drive. Alternatively, please advise DOT&PF if Hillside Drive is not State-managed right of way.
- Please coordinate this project with DOT&PF Central Region Right-of-Way Group in Anchorage.

Response: The Division appreciates review and input from DOT&PF. The Division may in the future develop a portion or portions of the land north of the subject parcel; in such a case the Division will dedicate or reserve additional access to that area if it is needed, including emergency access. As a part of the sale process the Division's Survey Section issues survey instructions based on the authorizations outlined in the preliminary decision, which include specific instructions for surveyors with regards to proposed easement dedications. Additionally, the platting authority must approve of the survey plat and any related dedications and vacations. DOT&PF is included in that process in cases where State-managed rights-of-way are vacated, and additionally has the opportunity for input in the platting process regardless of right-of-way management.

Alaska Department of Fish and Game: The Alaska Department of Fish and Game (ADF&G) reviewed the Preliminary Decision to sell 240 acres of state agricultural lands through a noncompetitive sale. ADF&G noted that these lands have been leased for agricultural purposes since 1964, with the applicant taking over the lease in 1995, and that the applicant has developed the land for a vegetable farm with current improvements as follows:

- a 30-foot by 40-foot residential home with well and septic system;
- a 30-foot by 40-foot shop on a concrete slab;
- three high-tunnel greenhouses 30-feet by 72-feet, situated on a gravel pad;
- a sawmill situated on an 8-foot by 40-foot concrete slab;
- one 300-gallon diesel fuel tank for an electrical generator; and
- one 300-gallon tank for residential heating oil.

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ADF&G summarized dedications as follows: the applicant will dedicate access along E. Moose Hollow Ave to Hillside Drive. Additionally, an unimproved ROW will be dedicated along the western boundary to provide access to the parcels to the north. ADF&G noted that the sale parcel does not include land adjacent to Answer Creek, and that the applicant will no longer be leasing those lands.

ADF&G has no fish, wildlife, or access concerns with the proposed land sale. ADF&G thanked the Division for the opportunity for review and requested a copy and notification of the Final Decision, when issued.

Response: The Division appreciates review of the Preliminary Decision and finds the summaries provided to be accurate with the exception that the right-of-way for E. Moose Hollow Ave is already dedicated, and that the Decision allows for the realignment of Hillside Drive to what is currently developed and used for access. ADF&G, along with any commenter to the Preliminary Decision, will receive a full copy of the Final Finding and Decision.

Individual commenter: The commenter noted that a 60-acre portion of this parcel was previously approved for sale and asked what has changed since that time. Additionally, the commenter expressed concern that the sale is not in the best interest of the State. The commenter expressed concern that the land lease was only issued in 1995, and that the lessor has a short history of stewardship. Additionally, the commenter recommends that the state sell a portion of the leasehold such as the originally approved 60-acres and sell the remainder competitively.

Response: The applicant originally applied to purchase a 60-acre portion of the leasehold under AS 38.05.102 and was approved for that purchase. Subsequently, the applicant requested to purchase a larger portion (240 acres) of the leasehold, which is the subject of this Decision. The Decision considers whether this sale is in the best interest of the State and concludes that it is for the reasons listed in the Decision. This Decision aligns with area precedents for selling parcels of State-owned land for agricultural purposes; many of those parcels are large in size to support agriculture uses. There may be future cases in which the State's interest is served by reserving some lands for competitive sale as pointed out in this comment. The original lease was issued in 1964; while the leasehold has changed hands as described in the Preliminary Decision, it is clear that there is a long history of use as a leasehold and a sale for agricultural purposes will not significantly change how the parcel is utilized.

Individual commenter: A publicly noticed neighbor commented in support of the proposed sale and requested to purchase a portion of lands in this decision related to his property. Specifically, "there is a small parcel of land North of the road easement that seems incompatible with ADL 22652 as it relates to the current road easement. [He is] concerned new owners could have access to [his] property line and disrupt what has been established since 1975." The commenter thanked the Department for the information provided, the opportunity to provide comment, and for engaging in a dialogue regarding the proposed purchase.

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Response: The proposed sale for ADL 26652 is for land north of Hillside Drive. As a requirement of the sale, the State requires a survey plat that realigns the road right-of-way with existing improved and used access, while vacating the portion of the right-of-way that is neither developed nor used for access. The sale excludes a small portion of land south of Hillside Drive, which adjacent landowners currently use as driveway access to Hillside Drive. Our Southcentral Regional Office and Land Conveyance Section look forward to working with these landowners towards an access solution as requested by this commenter.

Individual commenter: The commenter expressed concern that the vicinity map in Attachment A was not a clear depiction of the sale area and related easements and requested clarity as to whether the area for sale includes Hillside Drive. Additionally, the commenter expressed concern with the size of the parcel, asserted the subject parcel contains valuable real estate, and recommended selling a portion of the parcel to the applicant and selling the remainder competitively.

Response: The Division appreciates the comment and clarifies the sale area and easements as follows: The area proposed for sale is north of Hillside Drive as it is currently developed. The access easements will be dedicated as rights-of-way and managed by the platting authority, and will not be sold to the applicant as a part of the land sale.

The size of the parcel is consistent with nearby agricultural parcel sales; the parcel is currently agricultural land and must meet the requirements of AS 38.05.321, which prohibits subdividing the parcel into lots smaller than 40 acres and limits the use of the parcel to agricultural purposes. Last, the final size of the parcel is subject to a survey and approval of a survey plat by the Division's Surveys Section.

Individual commenter: The commenter asked to whom the land is being sold and at what price.

Response: If all stipulations of the Final Finding and Decision are met, the land will be sold to the applicant and current leaseholder. One stipulation is that the purchaser obtain an appraisal of the subject parcel which will determine the fair market value of the land; the fair market value is the purchase price for the parcel.

V. Modifications to Decision

The recommended action has not been modified from the original proposed action(s) described in the Preliminary Decision. However, after internal review with our Surveys Section, the Division does have one clarification:

Clarification: On page 7 of 12 of the Preliminary Decision, under the second bullet of the *Easements and Setbacks* heading, the Division states intent to “dedicate a 60-foot public use easement for the constructed location of Hillside Drive...”. To clarify, the Division's intent is to dedicate a right-of-way, and not reserve a public use easement.

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VI. Stipulations

The applicant will be required to comply with the following stipulations to complete the proposed land sale:

1. The lessee must remain in good standing with respect to the terms of the lease until the lease is relinquished. If the lessee is not in good standing at any time prior to relinquishment of the lease, the purchase process will be halted until the lessee regains good standing as determined by the Division.
2. Once the Final Finding and Decision is signed and the appeal period is over without an appeal received, a notice to proceed to survey will be issued. The applicant must hire a surveyor and the surveyor must apply to the Division's Survey Section for Survey Instructions.
3. After issuance of the Survey Instructions, the applicant must submit a completed survey to the Division's Survey Section for review. The applicant must have the survey approved by the Department and the Matanuska-Susitna Borough, as set forth in the Survey Instructions.
4. Upon approval and recording of the survey, a notice to proceed to appraisal will be issued. The applicant must hire an appraiser from the approved Department appraiser list. The appraiser must apply for appraisal instructions issued by the Division, and then must submit to the Division a completed fair market value appraisal in accordance with appraisal instructions issued by the Division. The Division must approve the appraisal.
5. Upon approval of the appraisal, a notice to proceed to purchase will be issued to the applicant. Within the time period specified in this notice, the applicant must submit the following to the Division:
 - A completed and signed Declaration of Intent Form; and
 - A signed and notarized Relinquishment of Land Lease form; and
 - Payoff amount plus patent application and recordation fees OR minimum 5% of the purchase price as deposit plus land sales contract application and recordation fees. Fees are established under to 11 AAC 05.100 & 200 and are subject to change. Some fees have been reduced by Director's Order Number 3.
6. Prior to the completion of the purchase and issuance of a state conveyance document, the applicant must remain in good standing with respect to all terms of the Contract for the Sale of Real Property throughout its term, if such a contract is issued. The applicant must also remain in compliance with all applicable state and local ordinances and regulations, including all applicable taxes. Failure to do so may result in termination of the Contract for the Sale of Real Property.

The applicant must complete steps 1-5 above by February 5, 2021, in order to ensure the applicant has a signed land sales contract before the lease extension expires on May 5, 2021. Failure to do this may result in the loss of the right to purchase this parcel of land or more

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likely, the applicant/lessee may need to apply for additional authorizations and incur associated costs, some which could be significant, to ensure continued use of the parcel. The applicant has been notified of the short survey and purchase timeline and is encouraged to work with the Department’s Southcentral Office to ensure continued use of the parcel if unable to meet sale deadlines in advance of lease termination.

If extenuating circumstances delay a stipulation listed above, the applicant is responsible for notifying the Division and receiving approval for the delay with new timeframes for completion to be given. Failure to do this could result in the closure of the purchase application. The purchase cannot be completed until all the above stipulations have been satisfied.

VII. Final Finding and Decision

The Land Conveyance Section recommends proceeding with the action as described in the Preliminary Decision. This action is undertaken under relevant authorities.

The findings above have been reviewed and considered. The Department recommends proceeding with the proposed action as described in the Preliminary Decision and this Final Finding and Decision. Public notice has been accomplished in accordance with AS 38.05.945, and comments received were considered. The case file has been found to be complete and the requirements of all applicable statutes have been satisfied.

[signature on file]

Recommended by: Rachel Longacre
Section Chief
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

[9/1/2020]

Date

Under the authority of the applicable statutes, it is in the best interest of the state to proceed with the recommended action(s) as described in this Final Finding and Decision.

[signature on file]

Approved by: Martin W. Parsons
Director
Division of Mining, Land and Water
Department of Natural Resources
State of Alaska

[9/4/2020]

Date

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Appeal Provision

A person affected by this decision who provided timely written comment or public hearing testimony on this decision may appeal it, in accordance with *11 AAC 02*. Any appeal must be received within 20 calendar days after the date of "issuance" of this decision, as defined in *11 AAC 02.040(c)-(d)* and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-907-269-8918, or sent by electronic mail to dnr.appeals@alaska.gov. Under *11 AAC 02.030*, appeals and requests for reconsideration filed under *11 AAC 02* must be accompanied by the fee established in *11 AAC 05.160(d)(1)(F)*, which has been set at \$200 under the provisions of *11 AAC 05.160(a)-(b)*. If no appeal is filed by the appeal deadline, this decision goes into effect as a final administrative order and decision of the Department on the 31st day after issuance. An eligible person must first appeal this decision in accordance with *11 AAC 02* before appealing this decision to Superior Court (*11 AAC 02.020(a)-(b)*). A copy of *11 AAC 02* may be obtained from any regional office of the Department of Natural Resources.

**STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND AND WATER**

Proposed Noncompetitive Sale to Preference Right Applicant

**PRELIMINARY DECISION – ADL 22652
pursuant to AS 38.05.102 and AS 38.05.321**

PUBLIC COMMENT PERIOD ENDS 3:30 PM, WEDNESDAY, AUGUST 26, 2020

I. Proposed Actions

Preliminary Decision: Approval of Noncompetitive Preference Right Sale ADL 22652

Attachment A: Vicinity Map

Attachment B: Public Notice

Primary Proposed Action: The Department of Natural Resources (Department), Division of Mining, Land and Water (Division), Land Conveyance Section (Section) received an application to purchase a parcel of State-owned land pursuant to Alaska Statute (AS) 38.05.102. The proposed decision allows the parcel to be sold noncompetitively sale to the applicant. The parcel is located 10 miles southeast of Talkeetna. The legal description is S1/2 NE1/4, SE1/4 of Section 4, Township 24 North, Range 4 West, Seward Meridian in the Talkeetna Recording District, Third Judicial District, containing approximately 240 acres. See Attachment A: Vicinity Map.

AS 38.05.102 allows the granting of a preference right purchase or lease to those holding leases authorized under AS 38.05.070-105 who are currently in good standing. A 1981 amendment to AS 38.05.070 made this section inapplicable to short-term leases. AS 38.05.321 authorizes the sale of agricultural lands by the State subject to covenants restricting use of the land.

Public Notice of Proposal: In accordance with AS 38.05.945 Notice the public will have the opportunity to submit written comment on this proposal during a notice period of at least 30 consecutive days.

See **Section VII. Submittal of Public Comments** at the end of this document and Attachment B: Public Notice for details on how to submit a comment for consideration. If, after consideration of timely, written comments, the Department moves forward with the proposal, a Final Finding and Decision will be issued.

II. Authority

The Department has authority under AS 38.05.102 to sell State-owned land if, on preparation and issuance of a written finding, it is determined to be in the best interest of the State, as required by AS 38.05.035(e) Powers and Duties of the Director. Article VIII, Section 1, of the State of Alaska Constitution states, "it is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest."

The Department has authority under AS 38.05.321 to restrict land use to agricultural purposes and AS 38.05.850 allows for dedication of rights-of-way.

III. Administrative Record

The project file for ADL 22652 constitutes the administrative record for this proposed action. Additional files, documents, and plans listed throughout this decision are incorporated by reference.

IV. Scope of the Decision

The scope of this decision is limited to determining if the applicant and the subject parcel qualify under AS 38.05.102, if it is in the State's best interest to sell the subject parcel, and if it is in the State's best interest to sell the subject parcel to the applicant. The patent will include agricultural restrictions as required by AS 38.05.321. Restrictions regarding land use will be handled by the local zoning authority, if any.

V. Description

- a. Location: The parcel is located 10 miles south of Talkeetna on the east side of the Parks Highway on USGS quadrangle map Talkeetna A-1.

Platting Authority: The subject parcel is located in the Matanuska-Susitna Borough.

Native Councils and Corporations: The regional corporation is Cook Inlet Region, Incorporated. There are no native village corporations or tribal councils in this area.

- b. Legal Description: The legal description is S1/2 NE1/4, SE1/4 of Section 4, Township 24 North Range 4 West, Seward Meridian in the Talkeetna Recording District, Third Judicial District, containing approximately 240 acres. See Attachment A: Vicinity Map. The parcel will be surveyed prior to sale.

- c. Title: The State received title to the S1/2 NE1/4 of Section 4, Township 24 North, Range 4 West, Seward Meridian through Tentative Approval 045504 filed January 14, 1959 and Patent Number 1213622 dated October 17, 1960. On April 16, 1962 a modified tentative approval conveyed the SE1/4 of Section 4, Township 24 North, Range 4 West, Seward Meridian, which is subject to any vested and accrued rights, reservations, easements, and exceptions listed in Patent Number 1226464.

The land was conveyed to the University of Alaska as part of the State's University Grant entitlement, state selection file UNIV 37. On December 21, 1983, the University of Alaska conveyed fee title back to the State, subject to valid existing rights, through Statutory Quitclaim Deed, recorded December 28, 1983, Book 99 Pages 229-31, Talkeetna Recording District. The state's casefile is OSL 792. Title Report 11633 was issued July 15, 2020.

State Reservation of Title: The State retains ownership of all oil, gas, coal, ore, minerals, fissionable material, geothermal resources, and fossils that may be in or upon the land that it sells (AS 38.05.125). The State and its successors reserve the right to enter onto the land

for the purposes of exploring for, developing, and producing these reserved mineral resources. Under common law, this access reservation is superior to any and all land uses. The State may also lease them to mineral developers or allow mining locations to be staked. However, Alaska law also provides that the landowner will be compensated for damages resulting from mineral exploration and development (AS 38.05.130).

Navigable Waters: Per AS 38.05.126 (b) Navigable and Public Waters, "...the State has full power and control of all of the navigable or public water of the State, both meandered and unmeandered, and the State holds and controls all navigable or public water in trust for the use of the people of the State." This trust is in accordance with the principles of the Public Trust Doctrine, which are included in Article VIII, Section 14 of the Constitution of the State of Alaska and protected in the United States Constitution. It is vested in the title to this land, is not transferable, and the State's title to submerged lands under navigable waters cannot be relinquished by a transfer of the property. In holding with this concept, navigability determinations are made and access will be reserved per AS 38.05.127 Access To and Along Public and Navigable Water. For more information, see Access To, Within, and Beyond Public or Navigable Water subsection of this document.

The Bureau of Land Management and the State of Alaska have not made a navigability determination in file UNIV 37 or OSL 792 for waters within the affected townships for title purposes.

Native Interest: The subject parcel is within the boundaries of the Cook Inlet Region, Incorporated regional corporation. There are no native interests identified with this parcel.

Other Conflicts or Pending Interest:

- ADL 22652 is subject to the dedicated 60-foot right-of-way for Hillside Drive depicted on Plat Number 65-4, Benka Lake Alaska Subdivision, recorded September 22, 1965 as Document Number 1965-000314-0 in the Talkeetna Recording District.
- ADL 22652 is subject to a public use easement for the constructed location of Hillside Drive granted to the Matanuska-Susitna Borough by D. Craig Clark and Bonnie M. Clark. The State of Alaska consented to the right-of-way on September 27, 1984. The proposed property line of the subject parcel will abut the constructed location of Hillside Drive.
- Matanuska Electric Association, Incorporated (MEA) holds a right-of-way easement granted by Robert and Cathie Dawson on July 1, 2003, described in Document No. 2005-000813-0, recorded May 19, 2005 in the Talkeetna Recording District to construct and maintain existing utility lines. The State has not consented to this agreement and considers the right of way easement to be unauthorized.

d. Background and Discussion:

On May 6, 1964, the State leased approximately 320 acres of land classified as agricultural to Don Clark for a term of 55-years, expiring on May 5, 2019. The lease was designated as ADL 22652. The lease restricted the use of the land to agricultural purposes and expressly

stated that any use in material conflict with the land classification constituted a breach of the lease and may be subject to termination.

In accordance with the terms of the lease, the lessee had the ability to assign the lands, or a portion of the land, if it was determined that the assignment was in the best interest of the State. Upon the Department's approval, the assignment would be granted, and the assignee became subject to the terms of the original lease which limited use of the land to agricultural purposes. Development of the land stalled while the lease went through a series of assignments in the 1970's and 1980's.

In 1989, a portion of the leasehold, described as Government Lot 1 containing 40.19 acres more or less, was assigned to Clifford and Beth Howard. The assignment created a new leasehold, serialized ADL 225090, and reduced the Clark's interest in the original lease, ADL 22652, to approximately 280 acres. In 1995, the Clark's assigned ADL 22652, described as Government Lot 2, S 1/2 of the NE 1/4, and the SE 1/4 of Section 4, to Robert L. Dawson and Cathie Jo Dawson.

Over the last 25 years, the Dawson's invested substantial time and resources developing the southern portion of the leasehold for agricultural use, and utilize the leasehold as their primary residence. The Dawson's operate a successful vegetable farm on the subject parcel and intend to continue operations upon purchase. Mr. Dawson submitted a State Farm Conservation Plan (SFCP), approved by the Division of Agriculture on September 18, 2018, showing current and future development plans for the property. The SFCP is valid through September 18, 2023.

Infrastructure at the leasehold currently consists of:

- a 30-foot by 40-foot residential home with well and septic system;
- a 30-foot by 40-foot shop on a concrete slab;
- three high-tunnel greenhouses,
- 30-feet by 72-feet, situated on a gravel pad;
- a sawmill situated on an 8-foot by 40-foot concrete slab;
- one 300-gallon diesel fuel tank for an electrical generator; and
- one 300-gallon tank for residential heating oil.

The conservation plan approved by the Upper Susitna Soil and Water Conservation District (SWCD) provides a development plan for the prospective sale parcel. The plan approves forage and biomass planting, forage harvest management, nutrient management, and grazing development located at the southern end of the subject parcel, and a large expanse of upland wildlife habitat management on the northern portion of the subject parcel. Infrastructure and access are located on the southern portion of the property.

In accordance with Section 23 of the lease and AS 38.05.102, the Director may, upon a finding that it is in the best interest of the State, allow the holder in good standing of that leasehold a preference right to purchase the land for its appraised fair market value, provided all relevant statutory requirements are met. On March 29, 2019, Mr. Dawson

applied to purchase an approximately 60-acre portion of land within the existing 280- acre leasehold pursuant to AS 38.05.102. That purchase was approved through a Final Finding and Decision issued by the Division on July 19, 2019.

The process to complete a purchase of land in accordance with AS 38.05.102 can take up to two-years or longer, and there was not enough time to adjudicate Mr. Dawson's preference right application prior to the expiration of the original lease on May 5, 2019. On April 17, 2019, the Southcentral Regional Land Office extended Mr. Dawson's lease, pursuant to AS 38.05.070(f), for a term of two years, subject to the terms of the original lease. The lease extension allows for Mr. Dawson's continued use of the land while a determination is made regarding his application and subsequent requirements. The division provided public notice of the extension in accordance with AS 38.05.070(g).

On April 27, 2020, Mr. Dawson requested to amend his application to purchase a total of 240 acres of the leasehold. The sale of additional acreage must undergo decision processes as required by AS 38.05.035(e), and as such the Division has issued this preliminary decision adjudicating the prospective sale of approximately 240 acres of the Dawson leasehold serialized as ADL 22652.

Discussion

Under AS 38.35.102 the State may sell land noncompetitively to a long-term leaseholder whose lease was authorized under AS 38.05.070-105. The lessee must be in good standing, and the sale must be in the best interest of the State.

The original lease was issued in 1964 under the authority of Chapter 169, SLA 1959, as amended. The Division finds that the issuance authority qualifies the lease for preference right claims under AS 38.35.102.

The preference right applicant and current leaseholders of the parcel are in good standing with the terms of the lease as of the last lease inspection conducted by the Southcentral Regional Office of the Division and as of the writing of this document. Title report 11633 and staff research shows no third-party interests or liens. Therefore, the applicant qualifies under AS 38.05.102 for a preference right claim.

The applicants have undertaken substantial improvements to develop the leasehold as an agricultural parcel. The Alaska Division of Agriculture supports the approximate 240-acre sale of the parcel with the current development plan in place. The parcel is well-suited for agricultural use and has been classified as agricultural land for that reason. The forested area of the parcel supports current agricultural efforts and provides lands to expand the applicant's current operation.

The use of the parcel for agricultural purposes is consistent with surrounding lands; the area has numerous agricultural parcels that have been transferred and conveyed by the State. The size of the parcel is consistent with nearby agricultural parcels and provides lands for expansion of farming operations as outlined in the development plan. Title

restrictions as required by AS 38.05.321 for sales of agricultural lands ensure that the parcel will continue to be used for agricultural purposes and may not be subdivided.

The location of the sale supports agribusiness in the area generally; Palmer, Wasilla, Talkeetna, and that Matanuska Susitna Borough are viable markets for sales of produce and farm products.

A sale of land in this case does not create an onerous precedent for the State. The State recently approved the sale of an agricultural parcel on adjacent lands (ADL 225090) under the authority of AS 38.05.102 and is following precedent with this sale. Sales of agricultural parcels are discretionary and reviewed on a case by case basis.

e. Planning, Classification, and Mineral Orders:

1. *Planning:* The subject parcel is located within the Susitna Matanuska Area Plan (SMAP), within the South Parks Highway management unit. The SMAP and Land Classification Order (LCO) SC-09-002 were adopted in August of 2011. The LCO superseded all previous land classification orders within the planning area of the SMAP.

The land classification for the subject parcel was mistakenly omitted in the SMAP. The Division of Agriculture requested a Determination of Plan Designation and Land Classification for the lands not addressed in the SMAP. On June 1, 2017, the Division issued Determination SC-09-002-D11 designating the lands as Agriculture with the classification of Agricultural Land.

2. *Land Use Classification:* The State classified the subject parcel as Agricultural Land under Classification Order SC-09-002-D11.

3. *Mineral Order:* The parcel has been previously closed to mineral entry by Mineral Closing Order 239.

Area plan subsurface management policy states that, in general, areas or parcels scheduled for disposal will be closed to mineral entry prior to sale to minimize potential conflict between land estate and mineral estate users.

Mineral orders for closures, where they have been established, close the area to exploration and development of locatable minerals such as gold, copper, platinum, etc. Mineral orders do not apply to leasable minerals, including oil and gas, coal, shallow gas, or exploration licensing for such, nor do they preclude reasonable surface access to these resources. However, Alaska law also provides that the surface owner will be compensated for damages resulting from mineral exploration and development (AS 38.05.130).

4. *Local Planning:* The subject parcel is located within the Y Community Council Area (YCC). A review of the 2007 Susitna (Formerly Y) Community Comprehensive Plan,

adopted March 6, 2007, and the Matanuska-Susitna Borough Comprehensive Plan - 2005 Update, adopted January 3, 2006, did not indicate any conflicts with the proposed sale.

f. Traditional Use Findings:

A traditional use finding is not necessary because the subject parcel is located within an organized borough. Additional information on traditional use is welcome during the public comment period and if this proposal is approved, the Division will address the information received in a subsequent Final Finding and Decision, if one is issued. See **Section VIII. Submittal of Public Comments** at the end of this documents and *Attachment B: Public Notice* for details on how to submit comment.

g. Access, including Access To and Along Public or Navigable Water:

The parcel is adjacent to and accessible via East Moose Hollow Avenue, South Mount Hunter Road, and Hillside Drive.

The Department has not identified any public, navigable, or anadromous water bodies within the subject parcel. If any such water bodies are discovered, parcels will be subject to access reservations in accordance with AS 38.05.127 Access to Public or Navigable Water.

Easements and Setbacks:

This parcel will be subject to a variety of reservations and restrictions to be of public record (see Subsection J. Survey for additional information) with the local platting authority. The easements and actions are identified below and will be shown on a survey plat:

- Vacation of the dedicated 60-foot right-of-way for Hillside Drive depicted on Plat Number 65-4, Benka Lake Alaska Subdivision, recorded September 22, 1965 as Document Number 1965-000314-0 in the Talkeetna Recording District;
- Dedicate a 60-foot public use easement for the constructed location of Hillside Drive described in Book 103, Pages 997-999A recorded November 8, 1984, Talkeetna Recording District. The proposed property line of the subject parcel will coincident with the northerly Right of Way of the constructed Hillside Drive;
- Dedicate a 60-foot public use easement on the western property boundary extending from East Moose Hollow Avenue to a point even with the southern boundary of ADL 225090 so as to provide access to remaining state land;
- Dedicate a right-of-way easement for utilities, as described in Document No. 2005-000813-0 recorded May 19, 2005, Talkeetna Recording District;
- A 50-foot wide section line easement on each side of surveyed or protracted section lines on State-owned land in accordance with AS 19.10.010 Dedication of Land for Public Highways and 11 AAC 51.025 Section-line Easements;
- Any additional setbacks or restrictions required by Patent; and
- Reservations, easements, and the survey plat are subject to the approval of the local platting authority.

Where appropriate, reservations and restrictions will be depicted on the plat and described in plat notes.

- h. Reservation of Mineral Estate: In accordance with section 6(i) of the Alaska Statehood Act and AS 38.05.125, the State, in this decision, reserves unto itself the mineral estate, including oil and gas, and the rights expressed in the reservation clause of the statute, that being the right to reasonable access to the surface for purposes of exploring for, developing and producing the reserved mineral resources. Exploration and development, if any, which could occur, would be consistent with AS 38.05.130 and other applicable statutes and regulations.
- i. Hazardous Materials and Potential Contaminants: There is no known contamination of, or hazardous materials on, the subject parcel. The applicant is expected to inspect the subject parcel to ascertain the quality and condition of the land. The State makes no representations and no warranties, express or implied, concerning the existence or absence of any hazardous substances, hazardous wastes, contaminants, or pollutants on the land proposed for conveyance to the applicant. The State does not assume any liability for the removal of hazardous substances, hazardous wastes, contaminants, or pollutants, nor for the remediation of the site should such substances ever be identified.

DNR recognizes there are potential future environmental risks associated when previously vacant land is occupied. Many of the activities increasing these potential risks are regulated by other agencies, such as the regulation of septic system installation by the Department of Environmental Conservation. The risk is no greater than when private vacant land undergoes development. Given this land has been designated as commercial settlement for transfer into private ownership, and given the high degree of interest from both the legislature and citizens in transferring State-owned land into private ownership, the Department is of the opinion that the benefits outweigh the potential risks

- j. Survey: Preliminary Survey Determination #SD 2019-02 dated January 24, 2019, determined the subject parcel to be unsurveyed. The applicant must have a completed survey approved by the Department and the Matanuska-Susitna Borough in order to purchase the subject parcel. Upon the Department's approval for purchase of the parcel, the applicant will be required to complete an Alaska State Land Survey (ASLS) at the applicant's expense. This survey must be approved by the Department and the Matanuska-Susitna Borough.
- k. Compensation/Appraisal: If the purchase is approved, the parcel will be sold at fair market value as required by AS 38.05.840(a). At the appropriate time, the Division will notify the applicant to begin the appraisal process and will provide a list of approved appraisers. The appraisal unit will provide appraisal instructions to an approved appraiser. The applicant bears the cost of appraisal. The date fixed for sale under AS 38.05.840(a) and the valuation date of the appraisal will be set as the date of inspection by the appraiser.

VI. Agency Review

Agency review is conducted concurrent with the public notice of this Preliminary Decision. Agency comments received will be addressed in the Final Finding and Decision along with public comment.

VII. Submittal of Public Comments

Pursuant to AS 38.05.945, the Division is issuing public notice inviting comment on this Preliminary Decision and the proposed related actions.

In accordance with AS 38.05.946(a), a municipality or corporation entitled to receive notice under AS 38.05.945(c) may hold a hearing within 30 days after receipt of the notice. If a hearing is held, the Commissioner (or representative) shall attend the hearing. The Commissioner has discretion whether or not to hold a public hearing

The Division will consider all timely, written comments received. If analysis of such comments indicates the need for significant changes to the Preliminary Decision or proposed related actions, additional public notice for the affected lands will be given. Reducing the amount of land offered and making minor changes to any of the proposals will not be considered significant changes requiring additional public notice.

If the proposals are approved and no significant change is required, the Preliminary Decision and proposed related actions, including any deletions, minor changes, and summary of comments and Division responses will be issued as a subsequent Final Finding and Decision without further notice. All related actions will be developed separately. However, approval of any action is dependent upon one another. One action will not proceed without approval of all actions.

Only persons from whom the Division receives timely, written comment during the identified comment period will be eligible to file a request for reconsideration of the Final Finding and Decision. Upon approval and issuance of a Final Finding and Decision, a copy of the decision, orders, and amendment will be made available online at <http://landsales.alaska.gov/>, and sent with an explanation of the request for reconsideration process to any party who provides timely written comment.

The Department is prepared to accommodate individuals with disabilities by providing auxiliary aids, services, or special modifications in order to participate in this review. Individuals who may need such assistance should contact the Department's Public Information Center. For more information refer to the attached Public Notice.

**DEADLINE TO SUBMIT WRITTEN COMMENT IS
3:30 PM, WEDNESDAY, AUGUST 26, 2020**

VIII. Stipulations

The applicant will be required to comply with the following stipulations to complete the proposed land sale:

1. The lessee must remain in good standing with respect to the terms of the lease until the lease is relinquished. If the lessee is not in good standing at any time prior to relinquishment of the lease, the purchase process will be halted until the lessee regains good standing as determined by the Division.
2. Once the Final Finding and Decision is signed and the appeal period is over without an appeal received, a notice to proceed to survey will be issued. The applicant must hire a surveyor and the surveyor must apply to the Division's Survey Section for Survey Instructions.
3. After issuance of the Survey Instructions, the applicant must submit a completed survey to the Division's Survey Section for review. The applicant must have the survey approved by the Department and the Matanuska-Susitna Borough, as set forth in the Survey Instructions.
4. Upon approval and recording of the survey, a notice to proceed to appraisal will be issued. The applicant must hire an appraiser from the approved Department appraiser list. The appraiser must apply for appraisal instructions issued by the Division, and then must submit to the Division a completed fair market value appraisal in accordance with appraisal instructions issued by the Division. The Division must approve the appraisal.
5. Upon approval of the appraisal, a notice to proceed to purchase will be issued to the applicant. Within the time period specified in this notice, the applicant must submit the following to the Division:
 - A completed and signed Declaration of Intent Form;
 - A signed and notarized Relinquishment of Land Lease form; and
 - Payoff amount plus patent application and recordation fees OR minimum 5% of the purchase price as deposit plus land sales contract application and recordation fees. Fees are established under to 11 AAC 05.100 & 200, and are subject to change. Some fees have been reduced by Director's Order Number 3.
6. Prior to the completion of the purchase and issuance of a state conveyance document, the applicant must remain in good standing with respect to all terms of the Contract for the Sale of Real Property throughout its term, if such a contract is issued. The applicant must also remain in compliance with all applicable state and local ordinances and regulations, including all applicable taxes. Failure to do so may result in termination of the Contract for the Sale of Real Property.

The applicant must complete steps 1-5 above by February 5, 2021, in order to ensure the applicant has a signed land sales contract before the lease extension expires on May 5, 2021. Failure to do this may result in the loss of the right to purchase this parcel of land or more likely, the applicant/lessee may need to apply for additional authorizations and incur associated costs, some which could be significant, to ensure continued use of the parcel. The applicant has been notified of the short survey and purchase timeline and is encouraged to work with the Department's Southcentral Office to ensure continued use of the parcel if unable to meet sale deadlines in advance of lease termination.

If extenuating circumstances delay any of the stipulations listed above, the applicant is responsible for notifying the Division and receiving approval for the delay with new timeframes for completion to be given. Failure to do this could result in the closure of the purchase application. The purchase cannot be completed until all the above stipulations have been satisfied.

IX. Discussion and Alternatives

The following alternatives were considered.

Alternative One: Sell

Offer the subject parcel for noncompetitive sale under AS 38.05.102 as proposed in this decision.

Alternative 1 provides an opportunity for an Alaskan family to purchase land they developed for agricultural use in the area. Due to the unique soil qualities of the area as reflected in agriculture land classification, and the ease of access to the Anchorage, Palmer and Talkeetna distribution network for agribusiness or agrarian products to nearby markets, the subject parcel is best suited for agricultural sale. Sale of the subject parcel as proposed will provide land to the private sector to be used for agricultural activity and generate revenue for the State. Therefore, it is in the best interest of the State to sell the parcel as proposed in this decision, and this is the preferred alternative.

Alternative Two: Lease

Continue to lease the land for agricultural use upon expiration of the current lease extension.

Under Alternative 2, the Department would continue to manage the land for agricultural purposes only, ensuring the lessee is in compliance with the terms of the lease. As provided by AS 38.05.070, Mr. Dawson's lease may be renewed only once for a term not longer than the initial term of the lease. The lease would be renewed under the current statutory framework, subject to additional requirements including survey and appraisal. In addition to expending resources to manage the land throughout the term of the lease; the State would need to manage any improvements remaining on the land upon expiration of the lease and undertake reclamation work, if needed, while forgoing income that could have been generated by the sale as proposed in this decision. This is not in the best interest of the State. This alternative is not preferred.

Alternative Three: Retain

The Division may take no action and retain the subject parcel. The benefits of this obtain are that the land may be used for other purposes consistent with surrounding land management intent for the area.

Under Alternative 3, the State would need to expend resources managing the land and its improvements, while forgoing the income that could have been generated by a sale. The subject parcel has undergone considerable development for agricultural use and existing infrastructure on the parcel includes a residential home with well and septic system, a shop on a concrete slab, multiple high-tunnel greenhouses on a gravel pad, and a sawmill situated on a concrete slab. Attempted removal would likely cause extensive damage to the soils. The improvements would

impose a significant maintenance or reclamation burden at the end of the lease. Retaining the subject parcel in state ownership is not in the best interests of the State. This alternative is not preferred.

X. Recommendation and Preliminary Decision

The proposed action, Alternative 1, is believed to be in the overall best interest of the State and is consistent with the requirements of AS 38.05.102. Alternative 1 provides accessible, quality land for private ownership and will generate revenue for the State.

After public notice, the subsequent review process may result in changes to the preferred alternative. A Final Finding and Decision will address any significant issues or concerns raised during the public review process.

The State does not guarantee the condition or usefulness of the subject land. The land is offered “as is” with no guarantees, expressed or implied, as to its suitability for any planned or potential use, or as to the availability of any public or private services.

If conditions for which this application was made change before proceeding to purchase, either by contract or payment in full, an amended decision, including further public notice, may be required prior to the completion of the purchase.

The proposed action may be in the best interests of the State and the Preliminary Decision is hereby approved to proceed to Public Notice in accordance with AS 38.05.945.

Prepared by:

[signature on file]
Jane Boer
Natural Resource Specialist
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources

July 27, 2020
Date of Signature

Approved by:

[signature on file]
Rachel Longacre, Section Manager
Land Conveyance Section
Division of Mining, Land and Water
Department of Natural Resources

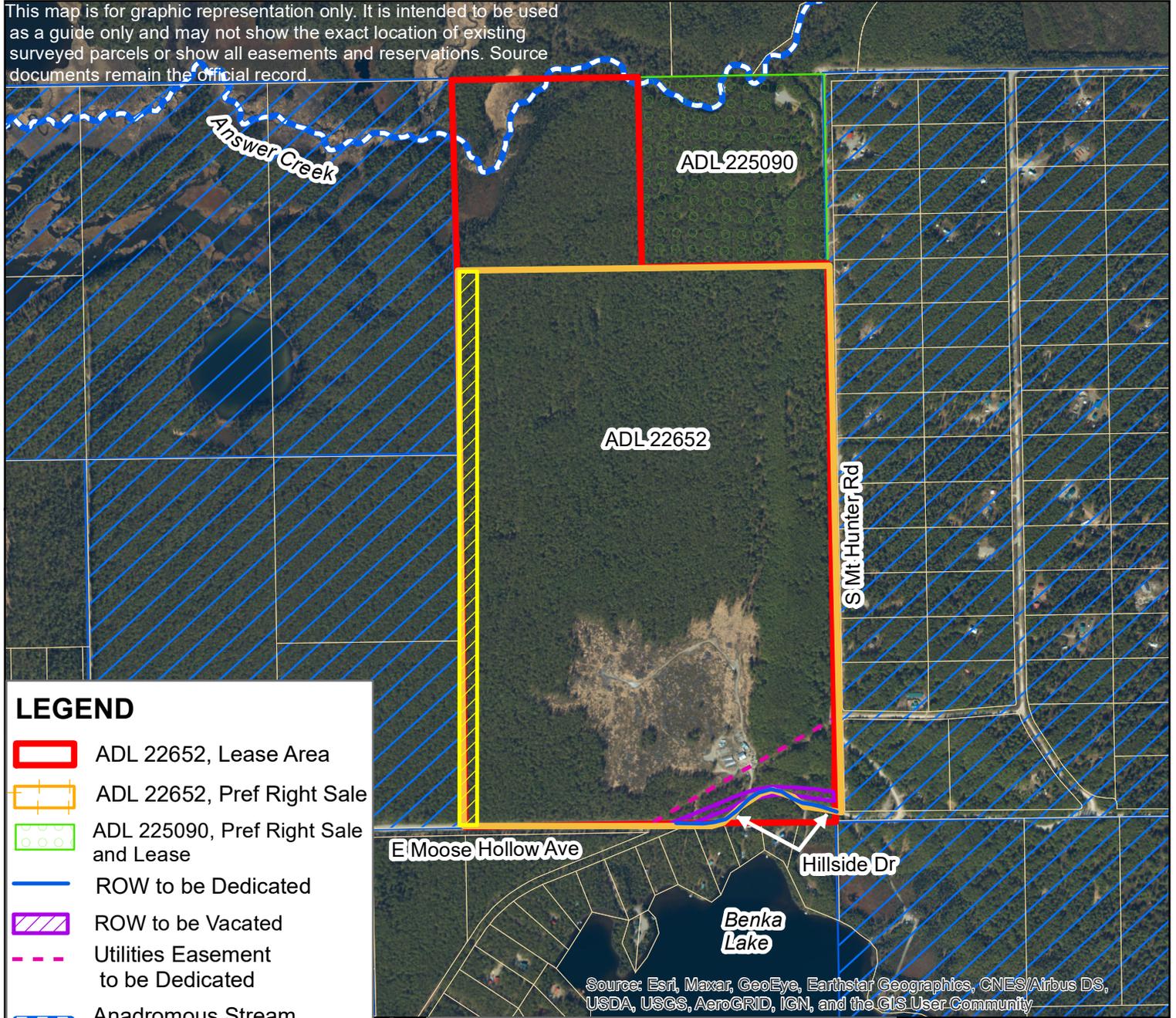
July 27, 2020
Date of Signature



Robert L. Dawson
ADL 22652

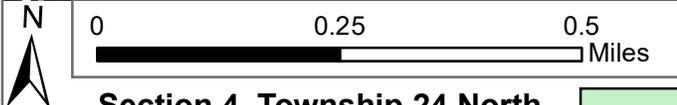
Attachment A: Vicinity Map
Preliminary Decision for a Proposed Noncompetitive Sale
Pursuant to AS 38.05.102

This map is for graphic representation only. It is intended to be used as a guide only and may not show the exact location of existing surveyed parcels or show all easements and reservations. Source documents remain the official record.



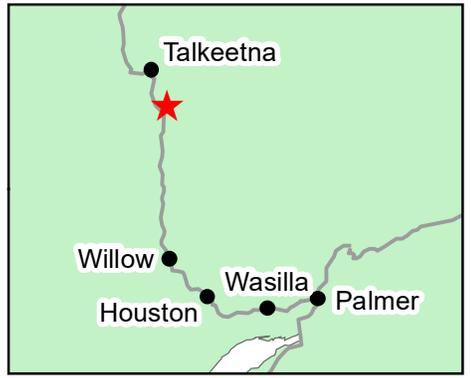
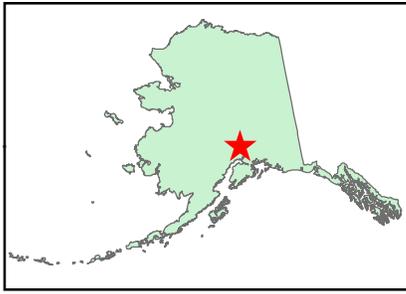
LEGEND

- ADL 22652, Lease Area
- ADL 22652, Pref Right Sale
- ADL 225090, Pref Right Sale and Lease
- ROW to be Dedicated
- ROW to be Vacated
- Utilities Easement to be Dedicated
- Anadromous Stream
- Municipal Entitlement
- ROW to be Dedicated



**Section 4, Township 24 North,
Range 4 West, Seward Meridian**

USGS QUAD 1:63.360
Talkeetna A-1
For more information contact:
Jane Boer
Department of Natural Resources
Division of Mining, Land, and Water
Land Conveyance Section Phone:
907-269-8851
Fax: 907-269-8916
Email: Jane.boer@alaska.gov



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

**STATE OF ALASKA, DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINING, LAND, & WATER
LAND SALES SECTION**

ATTACHMENT B: PUBLIC NOTICE

Requesting Input for Proposed Noncompetitive Sale to
Preference Right Applicant, ADL 22652
A Preliminary Decision under AS 38.05.102 and 38.05.321

COMMENT PERIOD ENDS 3:30PM, WEDNESDAY, AUGUST 26, 2020

The Alaska Department of Natural Resources (DNR), Division of Mining Land and Water (DMLW), is conducting a public notice for a noncompetitive land sale of land 10 miles southeast of Talkeetna, Alaska. The legal description is S1/2 NE1/4, SE1/4 of Section 4, Township 24 North, Range 4 West, Seward Meridian in the Talkeetna Recording District, Third Judicial District, containing approximately 240 acres.

To obtain the notice, Preliminary Finding and Decision, or instructions on submitting comment, go to <http://dnr.alaska.gov/mlw/landsale/> or <http://aws.state.ak.us/OnlinePublicNotices/>. For assistance in obtaining the documents by an alternative method, to request auxiliary aids, services, or special accommodations, contact DNR's Public Information Centers on State work days, Monday through Friday, between 10AM and 5PM in Anchorage at (907) 269-8400 or Fairbanks at (907) 451-2705 or the Southeast Land Office in Juneau at (907) 465-3400 or TTY: 711 for Alaska Relay or 1-800-770-8973 or go to <http://dnr.alaska.gov/commis/pic/> for additional contact information. Individuals who require special assistance must request assistance from the Public Information Center in Anchorage no later than 4:00 PM, Friday, August 14, 2020.

Pursuant to AS 38.05.945 Notice, the public is invited to submit comment on draft Mineral Order (MO 1240) and the Preliminary Decision (ADL 30089), for which notice is being conducted concurrently. If commenting on more than one proposed action, separate comments should be submitted for each. **The deadline for public comment is 3:30PM, WEDNESDAY, AUGUST 26, 2020.** Only persons from whom DNR DMLW receives timely, written comment during the identified comment period will be eligible to file an appeal of the Final Finding and Decision. Written comment may be received by fax, email, or postal mail. To submit comments or for direct inquiries, contact Jane Boer by mail at 550 West 7th Ave, Suite 640, Anchorage, AK 99501 or by fax at (907) 269-8916 or by email at jane.boer@alaska.gov.

If no significant change is required, the Preliminary Decision, including any minor changes and a summary of comments and responses, will be issued as the Final Finding and Decision without further notice. A copy of the Final Finding and Decision will be sent to any persons who commented timely on the preliminary decision.

DNR reserves the right to waive technical defects in this notice.